

108-1-1. Eligibility. (a) General definitions.

(1) "Commission" means the Kansas state employees health care commission.

(2) "Health care benefits program" means the state of Kansas health care benefits program established by the commission.

(3) "Permanent and total disability" means that an individual is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or has lasted or can be expected to last for a continuous period of at least 12 months. An individual shall not be considered to have a permanent and total disability unless that person furnishes proof of the permanent and total disability in the form and manner, and at the times, that the health care benefits program may require.

(b) Active participants. Subject to the provisions of subsection (c), the classes of persons eligible to participate as active participants in the health care benefits program shall be the following classes of persons:

(1) Any elected official of the state;

(2) any other officer or employee of a state agency who meets both of the following conditions:

(A) Is working in one or more positions that together require at least 1,000 hours of work per year; and

(B) is in a position that is not temporary. An employee who works under employment customs at any regents institution requiring less than a full calendar year of service shall not be considered temporary;

(3) any person engaged in a postgraduate residency training program in medicine at the university of Kansas medical center or in a postgraduate residency or internship training program in veterinary medicine at Kansas state university, but not including student employees of a state institution of higher learning;

(4) any person elected to a board position that requires less than 1,000 hours of work per year;

(5) any person serving with the foster grandparent program;

(6) any person participating under a ~~reduced service~~ phased retirement agreement outlined in K.S.A. 76-746, and amendments thereto; and

(7) any other class of individuals approved by the Kansas state employees health care commission, within the limitations set out in K.S.A. 75-6501; et seq., and amendments thereto.

(c) Waiting period.

(1) Each person who is within a class listed in paragraph (b)(1), (b)(2), (b)(3), (b)(4), or (b)(5) shall become eligible for ~~group health insurance coverage~~ enrollment in the health care benefits program following completion of a ~~60-day~~ 30-day waiting period beginning with the first day of work for the state of Kansas. Each person shall have 31 days after becoming eligible to elect ~~health insurance~~ coverage.

(2) The waiting period established in paragraph (c)(1) shall not apply if all of the following conditions are met:

(A) The person is returning to work for the state of Kansas or is transferring from a position that was eligible for coverage under K.A.R. 108-1-3 or K.A.R. 108-1-4.

(B) Immediately before leaving the prior position, the person was enrolled in ~~group health insurance in the prior position~~ the health care benefits program.

(C) The break in service between the prior position and the new position ~~meets either of the following conditions~~ does not exceed the following time periods:

(i) ~~Is 30 or fewer~~ calendar days or less; or

(ii) ~~is 365 or fewer calendar days or less,~~ if the person was laid off, as defined in K.S.A. 75-2948; and amendments thereto.

(3) The waiting period established in paragraph (c)(1) shall not apply to any person who, on that person's first day of work for the state, is enrolled in the health care benefits program on any of the following bases:

(A) As a direct bill participant;

(B) under the continuation of benefits coverage provided under public law 99-272, as amended; or

(C) as a dependent of a participant in the health care benefits program.

(4) The waiting period established in paragraph (c)(1) may be waived if, within 30 days of the date of hire, the agency head or designee meets the following requirements certifies in writing to the commission, or its designee, that the waiver is being sought for either of the following reasons:

(A) The agency head or designee shall provide both of the following certifications to the commission, or its designee, in writing:

~~(i) A~~ The potential new employee is not entitled to continuation of health benefits available from prior insurance coverage under either public law 99-272, the consolidated omnibus budget reconciliation act (COBRA), as amended, or state continuation of coverage laws, K.S.A. 40-2209 and K.S.A. 40-3209 and amendments thereto, and is not covered by or eligible to be covered by another health insurance plan.

~~(ii) The waiting period poses, or will pose, an obstacle to recruitment.~~

~~(B) The agency head or designee shall submit the request for a waiver before the employee's acceptance of the position~~ potential new employee is required to have health insurance as a condition of obtaining a work visa for employment in the United States.

~~(4) The waiting period described in paragraph (c)(1) may be waived by the commission if the commission determines that failure to grant a waiver would create a manifest injustice or an undue hardship on the employee.~~

(d) Classes of direct bill participants. Subject to the provisions of subsection (e), the classes of persons eligible to participate as members of the health care benefits program on a direct bill basis shall be ~~those classes of persons listed below~~ the following:

(1) Any former elected state official;

(2) any retired state officer or employee who is receiving retirement benefits under K.S.A. 74-4925, and amendments thereto, or retirement benefits administered by the Kansas public employees retirement system;

(3) any totally disabled former state officer or employee who is receiving disability benefits administered by the Kansas public employees retirement system;

(4) any surviving spouse or dependent of a qualifying participant in the health care benefits program;

(5) any person who is in a class listed in paragraph (b)(1), (b)(2), (b)(3), (b)(4), or (b)(5) and who is lawfully on leave without pay;

(6) any blind person licensed to operate a vending facility as defined in K.S.A. 75-3338, and amendments thereto;

(7) any former state officer, as that term is defined in K.S.A. 74-4911f ~~or K.S.A. 74-4911h~~, and amendments thereto, who ~~meets the following conditions:~~

~~(A) elected not to be a member of the Kansas public employees retirement system as provided in K.S.A. 74-4911f or K.S.A. 74-4911h, and amendments thereto;~~

~~(B) entered into an employee participation agreement for deferred compensation as provided in K.S.A. 75-5524, and amendments thereto; and~~

~~(C) received an employer contribution toward the deferred compensation plan, as provided in K.S.A. 74-4911f or K.S.A. 74-4911 for a minimum of 32 calendar quarters of service; and~~

(8) any former state officer or employee who separated from state service when eligible to receive a retirement benefit but, in lieu of that, withdrew that individual's employee contributions from the retirement system.

(e) Conditions for direct bill participation. Each person who is within a class listed in paragraph (d)(1), (d)(2), (d)(3), (d)(4), (d)(5), (d)(7), or (d)(8) shall be eligible to participate on a direct bill basis only if the conditions of both paragraphs (e)(1) and (e)(2) are met:

(1) The person was covered by the health care ~~benefit~~ benefits program on one of the following bases:

(A) The person was covered ~~by the state health benefits plan~~ as an active participant under subsection (b), as a COBRA participant under subsection (f), or as a spouse under paragraph (g)(1) immediately before the date that person ceased to be eligible for that type of coverage or the date the individual became newly eligible for a class listed in subsection (d).

(B) The person is the surviving spouse or eligible dependent child of a person who was enrolled as a plan participant under subsection (b) or (d) when the plan participant died, and the surviving spouse or eligible dependent child was ~~covered under~~ enrolled in the state health care benefits plan immediately before the date of death of program pursuant to subsection (g) when the plan participant died.

(2) The person ~~files a statement of election with the secretary of administration to continue coverage under the plan. The election to continue coverage shall be submitted in a form prescribed by the secretary of administration~~ completes an enrollment form requesting transfer to the direct bill program and submits the form to the health care benefits program. The form shall be submitted no more than 30 days after the person ceased to be eligible for coverage.

(f) Consolidated omnibus budget reconciliation act (COBRA) participants. Any individual with rights to extend coverage under provisions of public law 99-272, as amended, may continue to participate in the health care benefits program, subject to the provisions of that federal law.

(g)(4) Eligible dependent participants.

(1) Any person enrolled in the health care benefits program as a primary participant may enroll the following dependents, subject to the same conditions and limitations that apply to the primary participant:

(A) The primary participant's lawful wife or husband; and

(B) any of the primary participant's eligible dependent children.

(2) An eligible dependent child who is enrolled by one primary participant shall not be eligible to be enrolled by another primary participant.

(3) ~~Any~~ An individual who is eligible to enroll as a primary participant in the ~~school district plan under K.A.R. 108-1-3 or the local unit plan under K.A.R. 108-1-4~~ health care benefits program shall not be eligible to be enrolled under this subsection as a dependent in the health care benefits program.

(4) The term "dependent" shall exclude any individual who is not a citizen or national of the United States, unless the individual is a resident of the United States or a country contiguous to the United States, is a member of a primary participant's household, and resides with the primary participant for more than six months of the calendar year. The dependent shall be considered to reside with the primary participant even when the dependent is temporarily absent due to special circumstances, including illness, education, business, vacation, and military service.

(h) Eligible dependent participants; definitions. For purposes of subsection (g), the following terms shall be defined as follows:

(1) "Primary participant" means any person enrolled in the health care benefits program under subsection (b), (d), or (f) ~~of this regulation~~.

(2) "Child" means any of the following:

(A) A natural son or daughter of ~~the~~ a primary participant;

(B) a lawfully adopted son or daughter of ~~the~~ a primary participant. The term "lawfully adopted" shall include those instances in which ~~the~~ a primary participant has filed the petition for adoption with the court, has a placement agreement for adoption, or has been granted legal custody;

(C) a stepchild of ~~the~~ a primary participant. However, if the natural or adoptive parent of the stepchild is divorced from the primary participant, the stepchild shall no longer qualify;

(D) a child ~~for~~ of whom the primary participant has legal custody; or

(E) a grandchild, if ~~either~~ at least one of the following conditions is met:

(i) The primary participant has legal custody of the grandchild or has lawfully adopted the grandchild; ~~or~~

(ii) the grandchild lives in the home of the primary participant and is the child of a covered eligible dependent child, and the primary participant provides more than 50% of the support for the grandchild; or

(iii) the grandchild is the child of a covered eligible dependent child and is considered to reside with the primary participant even when the grandchild or eligible dependent child is temporarily absent due to special circumstances including education of the covered eligible

dependent child, and the primary participant provides more than 50% of the support for the grandchild.

~~(3) "Dependent child" means any child who meets the definition of "dependent" set out in 26 USC § 152, as amended by sec. 201 of the working families tax relief act of 2004, P.L. 108-311 and hereby adopted by reference, except for the following deletions and modifications:~~

~~(A) Paragraph (d)(1)(B) shall be deleted.~~

~~(B) Paragraphs (e)(1), (e)(2), and (e)(3) shall be deleted and replaced with the following:~~

~~"(e) Special rule for divorced parents.~~

~~"(1) In general. If —~~

~~"(A) a child receives over one half of the child's support during the calendar year from the child's parents —~~

~~"(i) who are legally divorced or legally separated under a decree of divorce or separate maintenance,~~

~~"(ii) who are separated under a written separation agreement, or~~

~~"(iii) who live apart at all times during the last six months of the calendar year, and~~

~~"(B) such child is in the custody of one or both of the child's parents for more than one-half of the calendar year,~~

~~"then the requirements of paragraphs (c)(1)(B) or (d)(1)(C) shall be deemed to have been met with respect to either of the parents. If either parent meets the requirements of either paragraph (c)(1) or paragraph (d)(1) without the application of the special rule in this subsection, then the child is the "dependent child" of either parent."~~

~~(4)~~ “Eligible dependent child” means any dependent child who meets the criteria in either paragraph ~~(h)(4)(A)~~ (h)(3)(A) or paragraph ~~(h)(4)(B)~~ below (h)(3)(B):

(A) The child meets all of the following criteria:

(i) The child is under 23 years of age.

(ii) The child is unmarried.

(iii) The child does not file a joint tax return with another taxpayer.

(iv) The child receives more than 50% of the child’s support from the primary participant, except that this criteria shall not apply with respect to any child who meets the conditions established under the special rule for divorced parents in ~~subsection (e) of 26 USC § 152, as modified by paragraph (h)(3)(B) of this regulation~~ (c), as in effect on October 7, 2008 and hereby adopted by reference.

~~(v) The child is a United States citizen, a United States national, or a resident of the United States, Canada, or Mexico at some time during the tax year.~~

(B) The child is over the age of 23, ~~is not capable of self-support because of mental retardation or severe physical handicap~~ has a permanent and total disability, and has continuously maintained group coverage as a an eligible dependent child of the primary participant before attaining the age of 23. The child shall be chiefly dependent on the primary participant for support.

(i) Direct bill participants; continuous coverage provisions.

(1) Except as otherwise provided in this subsection, each direct bill participant enrolled in the state health care benefits program on or after January 21, 2001, shall maintain continuous

coverage in the program or shall lose eligibility to be in the state health care benefits program as a direct bill participant under subsection (d).

(2) Any person who discontinued direct bill coverage in the state health care benefits program before January 21, 2001, and who is not participating on a direct bill basis on that date, may return one time to the state health care benefits program if the person meets the criteria specified in subsections (d) and (e) and if that person has not previously discontinued and returned to direct bill coverage before January 21, 2001.

~~(3) Any person who discontinues direct bill coverage in the state health care benefits program and maintains continuous coverage in a medicare risk plan may return to the state health care benefits program according to the open enrollment procedures.~~

~~(j) This regulation shall be effective on and after January 1, 2006. (Authorized by K.S.A. 2004 2008 Supp. 75-6501 and K.S.A. 75-6510; implementing K.S.A. 2004 2008 Supp. 75-6501; effective, T-85-22, July 16, 1984; effective May 1, 1985; amended, T-88-64, Dec. 30, 1987; amended, T-89-12, May 1, 1988; amended, T-108-9-12-88, Sept. 12, 1988; amended Oct. 31, 1988; amended May 9, 1997; amended Jan. 21, 2001; amended Aug. 27, 2004; amended June 17, 2005; amended Jan. 6, 2006; amended P-_____.)~~